

REMARKS

Favorable reconsideration of this application is respectfully requested, wherein new Claim 23 has been added to the application.

Claims 1, 6, 8, 11-14, 17-18, and 20-22 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,708,543 to *Matich*. Claims 2-5, 7, and 10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Matich*.

In maintaining the rejection of independent Claims 1 and 11 over *Matich*, the Examiner now takes the position that the upper generally planar support surface is defined by what the Examiner designates in a marked-up drawing as surface U. However, Applicant respectfully disagrees that this surface meets the claimed limitation. In particular, the surface designated by the reference character U in the Examiner's drawing cannot be considered either an upper surface or a support surface. Rather, when the rubber grip roof ladder of *Matich* is connected to a roof as intended via hooks 74 and 76, the surface designated as U is actually a lower, downwardly facing, surface. As such, it could not provide any support for a user's foot.

In addition, independent Claims 1 and 11 have been further amended to define that the surface is also a foot engaging surface. In contrast, the surface U which the Examiner now alleges is the upper generally planar support surface, is not configured to be a foot engaging surface. Moreover, neither the surface designated as L or U engage a portion of a user's foot, and cannot constitute foot engaging surfaces now defined in independent Claims 1 and 11. Accordingly, independent Claims 1 and 11 define patentable subject matter over the *Matich* reference.

With regard to new independent Claim 23, Claim 23 defines the subject matter of independent Claim 1 and also includes the subject matter of dependent Claim 2. As discussed in the specification beginning on page 2, line 7, the *Matich* reference discloses a number of triangular steps attached to a flexible rubber/foam backing board. This ladder-like system does not provide toeholds that are spaced sufficiently far enough apart to allow a worker to kneel between successive, or neighboring, toeholds. In contrast, as discussed in column 3, line 29, the ladder is constructed so that a user can step on adjacent rungs. More particularly, *Matich* does not disclose the feature wherein the steps are spaced apart by approximately 20 inches to approximately 36 inches, as defined in independent Claim 23.

In the Official Action, the Examiner concedes that *Matich* does not expressly teach that the steps are spaced apart by approximately 20 to 36 inches. However, the Examiner alleges that it would have been obvious to one having ordinary skill in the art at the time the invention was made to select the specific dimensions for the steps, since it has been held to be within the general skill of a worker in the art to select a known material and cutting down to the desirable dimensions on the basis of its suitability for intended use as a matter of obvious design choice. However, as discussed above, *Matich* is not constructed to allow a user to kneel between the steps. Rather, the steps are sufficiently spaced to allow a user in a generally vertical or inclined position to step onto the next adjacent step – thus leading away from the Examiner's conclusion that it would be obvious to space the rungs so as to allow a user to kneel. Moreover, constructing the roof ladder of *Matich* to include steps that are spaced 20 to 36 inches apart, as suggested by the Examiner, would destroy the intended functionality of this reference, as the steps would be spaced too far apart to

allow the user to adequately climb the ladder. As cautioned by the Federal Circuit, where a modification of the prior art device would render such device inoperable for its intended purpose, the mere fact that the prior art device could be so modified would not have made the modification obvious. In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984). Accordingly, Applicant submits that one having ordinary skill in the art would not modify the *Matich* reference to include steps spaced at a distance between 20 to 36 inches. *Matich* thus fails to disclose patentable features of independent Claim 23.

For at least the foregoing reasons, it is submitted that the step system of independent Claims 1, 11 and 23, and the claims depending therefrom, it is patentably distinguishable over the applied document. Accordingly, withdrawal of the rejections of record and allowance of this application are earnestly solicited.


Should any questions arise in connection with this application, or should the Examiner believe that a telephone conference would be helpful in resolving any remaining issues pertaining to this application, the undersigned respectfully requests that she be contacted at the number indicated below.

Respectfully submitted,

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By: _____


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